IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4326 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

BHARATKUMAR M DHOLAKIA - Respondent(s)

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Appearance :
MR KL PANDYA AGP for Petitioner No(s).: 1.
MR UT MISHRA for MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 01/08/2005

ORAL JUDGMENT

1.0 The petitioner State has challenged the award dated 13.12.1999 passed by the Industrial Tribunal, Rajkot, in Reference (IT) No.221 of 1989, whereby the petitioner was directed to place the respondent in the Pay-scale of Rs.210 – Rs.270.

2.0 The brief facts of the case are that the respondent herein filed the aforesaid reference before the Industrial Tribunal claiming a Grade of Rs.210 – Rs.270 for the Post of Assistant Machineman. The Tribunal, vide impugned order, allowed the said reference as aforesaid. Hence, this petition.

3.0 Mr. K.L. Pandya learned A.G.P has contended that since in the said Department of the petitioner State, there is no such Post of an Assistant Machineman, the Tribunal has committed an error by allowing the reference of the workman. He has further submitted that the Tribunal had no jurisdiction to entertain the reference in question.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The contention raised by Mr. Pandya as regards the existence of the Post in question has been dealt with extensively by the Tribunal in its award. From the impugned award, it clearly transpires that one Harish Dayalji Thakrar was appointed on the said Post of Assistant Machineman on 28.11.1985 in the Pay-scale of Rs.210 – Rs.270. Hence, the contention raised by Mr. Pandya that there is no such

Post of Assistant Machineman in the petitioner Department is wholly misconceived and without any substance.

4.1 So far as the contention as regards the jurisdiction of the Tribunal is concerned, it is required to be noted that the said contention has been raised for the first time before this Court only. It was not raised before the Industrial Tribunal. Hence, the said contention cannot be permitted to be raised before this Court at this stage, more particularly, when the reference in question is of the year 1989 and the workman has been granted benefit in the year 1999 w.e.f. 01.01.1990. I am in complete agreement with the reasonings given by the Tribunal in its impugned order and find no reason to interfere in this petition. Hence, the petition deserves to be dismissed.

5.0 For the foregoing reasons, the petition is dismissed. The impugned award of the Industrial Tribunal, Rajkot dated 13.12.1999 is confirmed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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